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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

SHIELDS WEST, LLC, Plaintiff and Respondent, v. CITY OF FRESNO, Defendant and Appellant.	F055298 (Super. Ct. No. 07CECG01961) **OPINION**

APPEAL from a judgment of the Superior Court of Fresno County. Jeffrey Hamilton, Judge.

James C. Sanchez, City Attorney, and Kathryn C. Phelan, Deputy, Dowling, Aaron & Keeler and Lynne Thaxter Brown, for Defendant and Appellant.

Kimble, MacMichael & Upton, Jeffrey Boswell and Mary Ann Bluhm, for Plaintiff and Respondent.

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In this case we hold that the trial court erred in concluding that the City of Fresno (City) was estopped from collecting $846,078.10 in fees (known as Urban Growth Management Impact Fees) from a developer constructing an apartment complex in the city. We also hold, in accordance with *Bright Development v. City of Tracy* (1993) 20 Cal.App.4th 783, and with the language of Code of Civil Procedure section 1094.5 itself, that an action under Government Code section 66020 (a section of the Mitigation Fee Act, Gov. Code §66000 et seq.) to "attack, review, set aside, void, or annul the imposition

of … fees … or other exactions imposed on a development project by a local agency" (Gov. Code, § 66020, subd. (d)(2)) is not an action in administrative mandamus when there has been no "final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in" an administrative decisionmaker. (Code Civ. Proc., §1094.5, subd. (a).) We will reverse the superior court's "Order Granting Writ of Administrative Mandamus," which ordered the City to refund, with interest, fees in excess of $239,966.48 and awarded attorney fees to the developer, and will direct the court to issue an order denying relief to the developer (respondent Shields West).

FACTS

On September 27, 2005, the City passed several resolutions significantly increasing Urban Growth Management Impact fees (UGM fees) applicable to development projects within the city. Specifically, the City added four new UGM fees: a fire facilities fee, a police facilities fee, a park facilities fee, and a "parkland dedication in-lieu fee" (sometimes referred to as a "Quimby" or "Quimby Act" fee (see Gov. Code, § 66477) (Quimby)). The resolutions were approved by the mayor on October 7, 2005. City Resolution No. 2005-425 stated that the new fees "shall become effective sixty (60) days after final passage" except for the Quimby fee, which "shall become effective thirty (30) days after final passage. Thus by the end of 2005 the new fees were in effect.

In April of 2007 respondent Shields West paid $846,078.10 in fees. Building permits were issued for the construction of an apartment complex in the city. Shields West then filed a superior court action alleging that it was entitled to pay UGM fees that were in effect before the new fees took effect, that the correct amount of fees was $334,726, and that the City should refund $511,352.10 of the amount paid ($846,078.10 minus $334,726.00). Shields West's action as brought pursuant to the Mitigation Fee Act (Gov. Code, §66000 et seq.), and particularly Government Code section 6020. That

section provides in part: "Any party may protest the imposition of any fees, dedications, reservations, or other exactions imposed on a development project … by a local agency" by following a protest procedure described in the statute. (Gov. Code, § 66020, subd. (a).) The protesting party then "may file an action to attack, review, set aside, void, or annul the imposition of the fees, dedications, reservations, or other exactions imposed on a development project by a local agency …." (Gov. Code, § 66020, subd. (d)(2).) It is not disputed here that Shields West satisfied the procedural requirements of the statute by paying the requested $846,078.10 in fees and serving the City with a written "notice" or "statement" explaining the basis for its protest. (Gov. Code, §66020, subd. (a).) Relying on language appearing in this court's decision in *N.T. Hill, Inc. v. City of Fresno* (1999) 72 Cal.App.4th 977, the superior court determined that Shields Wests's action should be treated as an action in administrative mandamus. (See Code Gov. Proc., §1094.5.) The city thus prepared and submitted an administrative record (AR). Over the City's objection, the court permitted Shields West to submit declarations not contained in the AR.

One such declaration was that of project architect Scott Vincent. According to Vincent, the plans for the apartments were field on July 21, 2004, and by October 2004 the plan check had been completed. A "Plan Check Corrections list" indicated that the UGM and other fees due for the apartments would be $239,966.48. Shortly after the completion of the plan check on October 15, 2004, the city indicated the fees would be $334,726. The developer offered to immediately pay the full amount requested for the UGM fees for the project, but City of Fresno staff representative Dan Wichman refused to accept the fees until the application was "complete." The developer then did further work on the project involving storm water drainage. At a November 2006 meeting, "City of Fresno staff informally commented that they believed that the fees for the project should have been 'locked' at the 2004 Master Fee Schedule rates due to the linkage of the Vesting Map and this project." As we shall later explain, the Vesting Map pertains to

an adjacent residential subdivision development located to the east of the apartment development. What Shields West and Vincent call the Vesting Map (which bears the label "Tentative Tract Map No. 5145") is clearly a map pertaining to the adjacent residential subdivision development. The boundaries of the apartment development do not even appear on this map, except for the portion of the apartment development's eastern border that also comprises the western border of the residential subdivision development depicted on the map.

Another meeting was held on January 5, 2007. At this meeting, "Matt Lopez and Brian Leong, on behalf of the City of Fresno, provided … a computer print out indicating that fees of $260,857.53 would be applicable." These same two persons "also represented … that all permits necessary for the apartments would be issued immediately upon the payment of the requested $260,857.53." A check for $260,857.63 was then presented by one of the landowners, Bryan Thompson, but the check "was not accepted." Fees of $846,078.10 were paid under protest on April 11, 2007, and finalized building permits were issued at that time.

Shields West also presented the declaration of Mike Nankervis, the vice president of the general contractor for the project. Nankervis described himself as "the project manager and construction supervisor" for the project. The Nankervis declaration states that Nankervis was present at the November 2006 and January 2007 meetings described by Scott Vincent in Vincent's declaration, and essentially corroborates the information in the Vincent declaration about those meetings. Nankervis added that at the January 2007 meeting a document "was printed out" indicating the fees due to be $260,857.51. When he attempted to pay the fees, he was given another document which "requested payment of $846,078.10." Although the Nankervis declaration describes each of these documents as a "receipt," neither Nankervis and Shields West contends that any money was actually paid to the City in January. Rather, as Nankervis further states, "the City of Fresno continued to refuse to accept the lower fees" until the $846,078.10 was paid under protest

in April of 2007. The superior court, relying on the doctrine of equitable estoppel, found that Shields West was entitled to pay fees under the old fee schedule, that the correct amount of fees was $239,966.48, and that the City should refund any fees collected in excess of that amount. The City has appealed.

APPELLANT'S CONTENTIONS

The City contends that Shields West was not entitled to pay pre-2006 UGM fees on a development for which a building permit was issued in 2007, and that the superior court's application of the doctrine of estoppel to the evidence presented was an error of law. As we shall explain, we agree with the City and will reverse the superior court's order.

The City also argues that because the superior court action was properly (in the City's view) treated as an action in administrative mandamus, the superior court should have considered only the matters contained in the administrative record prepared by the City, and should not have admitted into evidence the declarations offered by Shields West. Shields counters that because it also sought relief in traditional mandamus, the court could properly consider those declarations. The City replies that erroneous admission of the Vincent and Nankervis declarations in a proceeding treated by the court as one in administrative mandamus resulted in a one-sided hearing at which the City could not rebut the evidence presented in its opponent's declarations. As we shall explain, in this case there was no "final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in" an administrative decisionmaker (Code Civ. Proc., § 1094.5, subd. (a)), and the trial court thus erred in treating the superior court proceeding as an action in administrative mandamus. Each side should have been permitted to introduce whatever relevant, material, and otherwise admissible evidence it wished to introduce. However, because the trial court considered all the evidence offered by Shields West, and because that

evidence did not entitle Shields West to the relief it sought (and the relief granted by the trial court – payment of UGM fees in the lower, pre-2006 dollar amounts), any procedural error which may have occurred in admitting the Vincent and Nankervis declarations was harmless.

ESTOPPEL AND VESTED RIGHTS

The superior court found in favor of Shields West on an estoppel theory. "The doctrine of equitable estoppel is founded on concepts of equity and fair dealing. It provides that a person may not deny the existence of a state of facts if he intentionally led another to believe a particular circumstance to be true and to rely upon such belief to his detriment. The elements of the doctrine are that (1) the party to be stopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppels has a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury." (*Strong v. County of Santa Cruz* (1975) 15 Cal.3d 720, 725; in accord, citing *City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 488-489.) "[A]lthough estoppel may be applied against the government justice and right require it, the doctrine is inapplicable if it would result in the nullification of a strong rule of policy adopted for the benefit of the public." (*Strong*, *supra*, 15 Cal.3d at p. 725.)

"[T]here is no meaningful distinction between an estoppel claim and a vested right claim where land use is at issue." (*Toigo v. Town of Ross* (1998) 70 Cal.App.4th 309, 321; *Hermosa Beach Stop Oil Coalition v. City of Hermosa Beach* (2001) 86 Cal.App.4th 534, 552, fn. 10.) "It has long been the rule in this state and in other jurisdictions that if a property owner has performed substantial work and incurred substantial liabilities in good faith reliance upon a permit issued by the government, he acquires a vested right to complete construction in accordance with the terms of the permit." (*Avco Community Developers, Inc. v. South Coast Regional Com*. (1976) 17 Cal.3d 785, 791; *Russ Bldg. Partnership v. City and County of San Francisco* (1988) 44 Cal.3d 839, 845-846) "Once

a landowner has secured a vested right the government may not, by virtue of a change in the zoning laws, prohibit construction authorized by the permit upon which he relied." (*Avco Community Developers, Inc*, supra, 17 Cal.3d at p. 791; *Russ Bldg. Partnership, supra*, 44 Cal.3d at p. 846.) *Toigo v. Town of Ross, supra*, explained the rule as follows:

> "The principle of estoppel, when invoked in this context, prohibits a governmental entity from exercising its regulatory power to prohibit a proposed land use when a developer incurs substantial expense in reasonable and good faith reliance on some governmental act or omission so that it would be highly inequitable to deprive the developer of the right to complete the development as proposed. (See *Patterson v. Central Coast Regional Com*. (1976) 58 Cal.App.3d 833, 844.) The theory of equitable estoppel simply recognizes that, at some point in the development process, a developer's financial expenditures in good faith reliance on the governmental entity's land use and project approvals should estop that governmental entity from changing those rules to prevent completion of the project.
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> "We note at the outset that *Tiogo* faces daunting odds in establishing estoppel against a governmental entity in a land use case. Courts have severely limited the application of estoppel in this context by expressly balancing the injustice done to the private person with the public policy that would be supervened by invoking estoppel to grant development rights outside of the normal planning and review process. (*Avco Community Developers, Inc. v. South Coast Regional Com.* [(1976) 17 Cal.3d 785]), 800.) The overriding concern 'is that public policy may be adversely affected by the creation of precedent where estoppel can too easily replace the legally established substantive and procedural requirements for obtaining permits.' (*Smith v. County of Santa Barbara* (1992) 7 Cal.App.4th 770, 775.) Accordingly, estoppel can be invoked in the land use context in only 'the most extraordinary case where the injustice is great and the precedent set by the estoppel is narrow.' (*Ibid*.)
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> " … In California, the developer's right to complete a project as proposed does not vest until a valid building permit, or its functional equivalent, has been issued and the developer has performed substantial work and incurred substantial liabilities in good faith reliance on the permit. (*Avco Community Developers, Inc. v. South Coast Regional com*., *supra*, 17 Cal.3d at p. 791; *Raley v. California Tahoe Regional Planning Agency* [(1977) 68 Cal.App.3d 965], 975; *Del Oro Hills v. City of Oceanside* (1995) 31 Cal.App.4th 1060, 1082-1983.) Courts have yet to extend the

> vested rights or estoppel theory to instances where a developer lacks a building permit or the functional equivalent, regardless of the property owner's detrimental reliance on local government actions and regardless of how many other land use and other preliminary approvals have been granted. To the contrary, it has been stated that '"[w]here no such permit has been issued, it is difficult to conceive of any basis for such estoppel." [Citations.)'" (*Toigo v. Town of Ross*, *supra*, 70 Cal.App.4th 321-322, fn. omitted.)

As we have already mentioned, the city resolutions adopting the new and higher fees took effect in late 2005. The resolutions contain language describing the developments to which the fees are applicable and explaining when the fee is due. For example, City Resolution No. 2005-427 adopted the park facilities fee. Paragraph 2 of the resolution states: "A Park Facilities Fee ('Fee') is hereby imposed on each Single Family and Multi-Family Development and shall be paid at the times and in the amounts set forth in this Resolution." Paragraph 3 is entitled "Time for Fee Payment" and states:

> "The Fee shall be charged and paid for each Single Family and Multi-Family Development upon the earlier of the date of final inspection or issuance of the certificate of occupancy for such residential Development'; except that, if the Fee is to reimburse the City for expenditures previously made, or if the City determines that the Fee will be collected for Facilities for which an account has been established and funds appropriated and for which the City has adopted a proposed construction schedule prior to issuance of the building permit for such residential Development, then the Fee shall be charged and paid upon issuance of the building permit for such Development."

It is not disputed that there was no "certificate of occupancy" for the apartment complex in January of 2007 or at any earlier time. According to Vincent's declaration, building permits for the apartments were not issued until April of 2007 and construction commenced on approximately May 1, 2007.

Under these circumstances, we see no evidence to support a conclusion that Shields West had any vested right to pay fees at the pre-2005 rates. Shields West asserts that when it attempted to pay fees in October 2004, the City refused to accept payment. According to the Vincent declaration, the January 2007 meeting "was requested by [land

owner] Bryan Thompson to come to an agreement regarding the fees." According to Vincent, City staff representatives represented that the amount of fees due for issuance of building permits for the apartments was $260,857.53, but "later that same day" a check for this amount "was not accepted." Although representations by city officials about what would be legal or permissible do not appear to be something upon which a person may reasonably rely to obtain a vested right (see *Anderson v. City Council* (1964) 229 Cal.App.2d 79, at pp. 82-87), Shields West presented no evidence that it relied at all, reasonably or unreasonably, to its detriment on this representation. All it did was prepare a check for the lower amount, and the check was then refused. Shields West makes no mention of the language of the ordinances, which clearly explain why the new fees are applicable to Shields West. To the extent that the superior court's ruling appears to conclude that even in the absence of any vested right by Shields West to pay the pre-2005 fees, the City is estopped from collecting the higher fees because of representations made at the January 2007 meeting, we reject that conclusion.

Absent vested rights, a land owner may obtain something akin to vested rights protection by utilizing one of two procedures adopted by the Legislature to provide such protection. One such procedure is to enter into a development agreement. (See Gov. Code, § 65866 and *Toigo*, *supra*, 70 Cal.App.4th at p. 322, fn. 9.) The other is to file a vesting tentative map. (See Gov. Code, §§ 66498.1 - 66498.9 and *Bright Development v. City of Tracy*, *supra*, 20 Cal.App.4th at pp. 792-793.) Shields West makes no assertion that it entered into a development agreement or met the statutory requirements for a development agreement. We thus need say nothing more about that procedure. In the trial court Shields West contended that there was a vesting tentative map. The trial court appears to have agreed with that contention. However, as we have already explained, the vesting tentative map was for an adjacent residential subdivision project. It was not for the apartment complex project, and in fact the apartment complex project is not even depicted on that map.

Shields West argues that "the City's written policy provides impact fees may be paid upon calculation during the plan check process to avoid pending fee increases." In support of this contention Shields West cites to a City form called a "Plan Check Correction List." What that form actually says is: "The following development impact fees and charges are due at time of issuance of Building Permit. The fees and charges are based on rates now in effect; any new fee and fee rates which become effective before the fee obligation is paid may be applied up to the time the fee obligation is payable." The form then lists various fees, including some UGM fees. Rather than show that fees may be paid during the plan check process to avoid pending fee increases, this language expressly states that the fees are due at the time of issuance of the building permit. This occurred in 2007, long after the new fees took effect in late 2005.

Shields West made no contention that it was entitled to a building permit for the apartment project before the new fees took effect. And if Shields West had been of the view that it was entitled to issuance of a building permit in 2004, before the new fees took effect in late 2005, and that the City was legally obligated to accept payment of fees in 2004 and issue a building permit in 2004, we see no reason why Shields West could not have brought court action to compel the issuance of that permit before the new fees took effect. Shields West acknowledges that the City announced its proposed UGM fee increase as early as September 2004. The City Planning and Development director approved Shields West's conditional use permit application for the 10-acre, 160 –unit apartment development on October 24, 2003. An express condition of that approval stated, under the capitalized heading "URBAN GROWTH MANAGEMENT (UGM) REQUIREMENTS AND FEES" …. "The following UGM fees are required and shall be payable at the fee rate listed in the Master Fee Schedule at the time of [*sic*] payment is due. New UGM fee rates adopted by the Council prior to issuance of building permits may also be applied." Shields West makes no contention and presented no evidence that anyone from the City ever represented, at least prior to late 2006, that Shields West might

not be subject to the new UGM fees when it sought its building permit for the apartment complex.

PROCEDURE

In *N.T. Hill, Inc. v. City of Fresno, supra,* 72 Cal.App.4th 977, we stated, with regard to the Mitigation Fee Act: "[S]ection 66022 applies when the plaintiff's goal is a judicial finding that the legislative decision adopting the charge cannot be enforced in any circumstance against any existing or future development because of some procedural or substantive illegality in the decision and section 66020 applies when the plaintiff's goal is a judicial finding that the charge set by the legislative decision cannot be demanded or collected in whole or in part with respect to a specific development. In the latter situation, the fundamental validity of the legislative decision enacting or modifying the fee is not in issue." (*N.T. Hill, Inc*., *supra,* 72 Cal.App.4th at pp. 986-987.) In that case, we concluded that the action there in issue involved a challenge to the fundamental validity of the fee legislation, that section 66022 applied, and that the trial court had therefore erred in dismissing the action for failure of the plaintiff to comply with the procedural requirements of the inapplicable statute, section 66020. In a footnote, we stated: "Adjudicatory decisions of governmental agencies are reviewed under administrative mandamus (Code Civ. Proc., § 1094.5), while legislative decisions by governmental agencies are reviewed under ordinary mandamus (Code Civ. Proc., § 1085)." (*N.T. Hill, Inc*., *supra*, 72 Cal.App.4th at p. 987, fn. 6.) In the present case, Shields West does not challenge the validity of the ordinances enacting the new and higher fees. It sought a refund under Government Code section 66020 of what it considered to be excess fees it paid under protest. The trial court, taking its cue from *N.T. Hill, Inc*. and expressly citing to footnote 6 of our *N.T. Hill, Inc*. decision, ruled that "the developer is challenging an adjudicatory decision of a governmental agency by writ of administrative mandamus under CCP 1094.5."

The significance of the trial court's determination that the action should be deemed an action in administrative mandamus is that the review undertaken in administrative mandamus is review of an agency's action and thus, with rare exceptions, "is limited to the record compiled by the administrative agency." (*State Bd. Of Chiropractic Examiners v. Superior Cour*t (2009) 45 Cal.4th 963, 977.) "New evidence is not admissible, except under the narrowest of circumstances." (Cal. Administrative Mandamus (Cont.Ed.Bar 2003), §1.6, p. 7; see also Code Civ. Proc.,§ 1094.5, subd. (e); and *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 578-579.) In the case before us, the City contends that the court erred in admitting the declarations offered by Shields West because those declarations were not part of the administrative record, and in fact were not prepared until Shields West filed its court action

We wish here to set the record straight. Nothing we said in *N.T. Hill, Inc., supra*, appears to have been intended to upset or alter well settled law pertaining to the applicability of administrative mandamus. When this court said in footnote 6 of *N.T. Hill, Inc., supra*, that "[a]djudicatory decisions of governmental agencies are reviewed under administrative mandamus (Code Civ. Proc., §1094.5), while legislative decisions by governmental agencies are reviewed under ordinary mandamus (Code Civ. Proc., §1085)," (id. at p. 988) we cited to *Balch Enterprises, Inc. v. New Haven Unified School Dist.* (1990) 219 Cal.App.3d 783, and specifically to page 791 of the *Balch Enterprises, Inc*. decision. There, the court stated:

> "Administrative mandamus, however, is available only to review adjudicatory decisions of government agencies. (Cal. Administrative Mandamus (Cont.Ed.Bar 1989) § 3.2, p. 70.) Since the school board's decision to impose the development fees applied generally to all future commercial and industrial development within its jurisdiction, the decision had a legislative rather than adjudicatory character. 'Generally speaking, a legislative action is the formulation of a rule to be applied to all future cases, while an adjudicatory act involves the actual application of such a rule to a specific set of existing facts.' (*Strumsky v. San Diego County Employees Retirement Assn*. (1974) 11 Cal.3d 28, 35, fn. 2 [112 Cal.Rptr.

805, 520 P.2d 29]. Moreover, section 1094.5 is restricted to agency decisions made in proceedings involving (a) a hearing, (b) presentation of evidence, and (c) findings of fact." (*Balch Enterprises, Inc. v. New Haven Unified School Dist., supra,* 219 Cal.App.3d at p. 791.)

It has long been the rule that a "petition for writ of administrative mandate under Code of Civil Procedure section 1094.5 may be brought only 'for the purpose of inquiring into the validity of any final administrative order or decision made as the result of a proceeding in which *by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior tribunal, corporation, board, or officer*.' (Code Civ. Proc., §1094.5, subd. (a), italics added.)" (*State Bd. of Chiropractic Examiners v. Superior Court, supra,* 45 Cal.4th at p. 974; see also Cal. Administrative Mandamus (3d ed.), supra, §1.7.) As we have already stated, in the case presently before us there was no hearing and no evidence taken. There was not even really any decision making any "determination of facts." (Code Civ. Proc., § 1094.5, subd. (a).) Shields West sought the issuance of a building permit in late 2006 and early 2007 without paying the fees due under a fee structure that had been in place since late 2005, and the City refused to issue the permits without the fees being paid. There was no administrative hearing for the court to review. The City argues that administrative mandamus is nevertheless the correct procedure to be followed in an action under Government Code section 66020 because we should imply from the statute a right to a hearing. For this proposition the City cites *Chavez v. Civil Service Com.* (1978) 86 Cal.App.3d 324, where the court stated "where there is no specific provision for a hearing, a hearing requirement is to be implied, absent a contrary intent expressed in the provisions creating the right of appeal." (*Id*. at p. 332.) In *Chavez*, however, the court was dealing with Sacramento County Civil Service Commission rule 8.3, which is described in the opinion as a rule "which authorizes appeal [to the Commission] from the dismissal of a probationary employee only where discrimination is asserted." (*Chavez, supra*, 86 Cal.App.3d at p. 327 (fn. omitted).) The court stated "[t]here being no contrary

intent expressed in either the [County's] Charter or the [Commission's] rules, we hold that an evidentiary hearing was required and section 1094.5 applies." (*Id*. at p. 332.)

In the case before us, however, the City does not call our attention to any rule or law requiring the City to hold an evidentiary hearing whenever a developer seeks a permit and contends that a validly enacted City fee is not applicable to that developer. The hearing available to the developer is not an administrative one (unless of course a city chose to adopt a procedure providing for one), but rather is the court action provided by Gov. Code, § 66020 itself. (Gov. Code, § 66020, subd. (c)(2).) Many of the appellate decisions construing Government. Code section 66020 deal with difficult issues concerning the types of fees to which the statute applies, and the appropriate statute of limitations to be applied to the plaintiff's action. (See 12 Witkin, Summ. of Cal. Law (10th ed. 2005), Real Property, §818 and authorities therein cited. See also *Barratt American, Inc. v. City of Rancho Cucamonga* (2005) 37 Cal.4th 685.) The City points to no decision holding or even implying that a plaintiff who has not had an administrative hearing is barred from presenting whatever evidence is relevant, material and otherwise admissible in that plaintiff's court action brought pursuant to Government Code section 66020, subdivision (d)(2).) We are aware of none. To the contrary, the court in *Bright Development v. City of Tracy* (1993) 20 Cal.App.4th 783 specifically addressed the procedural scenario we have here, i.e., "it does not appear that an adjudicatory-type hearing was held or findings made" and "[i]ndeed, it does not appear there were any quasi-judicial proceedings whatsoever." (*Bright Development, supra,* 20 Cal.4th at p. 794.) As the court in *Bright* explained, an action in such circumstances is in the nature of an action in traditional mandamus (Code Civ. Proc., § 1085), and "'[m]andate [may issue] against a local legislative body that acts without power or refuses to obey the plain mandate of the law.'" (*Bright Development, supra,* 20 Cal.App.4th at p. 795.) That is what Shields West contends occurred here. "And in a traditional mandamus proceeding,

the parties may present evidence outside the administrative record." (*Bright Development, supra*, 20 Cal.App.4th at p. 795.)

Shields West argues that because the City did not file an answer to its petition, the City should be bound by the undenied allegations of Shields West's petition, which alleged that Shields West was entitled to relief under both traditional and administrative mandamus. "It is established practice to join a petition for administrative mandamus under CCP §1094.5 with a petition for traditional mandamus when the petitioner is uncertain as to which is applicable." (Cal. Administrative Mandamus, *supra*, §1.12.) This argument was not made to the trial court, however, which clearly decided the case on the basis of the evidence presented to it in the administrative record and on the declarations submitted by Shields West. It is thus waived for purposes of this appeal. (*Doers v. Golden Gate Bridge Etc. Dist.* (1979) 23 Cal.3d 180, 184-185, fn. 1.) As we have already explained, however, the court considered all of the evidence submitted by Shields West, and that evidence failed to demonstrate that Shields West is entitled to the relief it sought.

DISPOSITION

The trial court's order granting a refund of fees to respondent Shields West IS REVERSED IN ITS ENTIRETY. The trial court is directed to issue an order denying relief to Shields West and to enter judgment in favor of the City. Costs to appellant.

_____
Ardaiz, P.J.

WE CONCUR:

_____
Vartabedian, J.

_____
Levy, J.